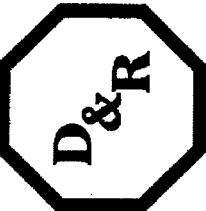


Depositions

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

HITUL GANDHI, individually)
and on behalf of a class of)
others similarly situated,)
Plaintiff,)
vs.) No. A-08-CA-248-JRN
DELL INC., and DELL)
MARKETING USA, L.P.,)
Defendant.)

CATHERINE L. DAVIS and TOMMY)
MOORE, Individually and on)
Behalf of others similarly)
situated,)
vs.) No. A-08-CA-794-JRN
DELL, INC. d/b/a DELL)
COMPUTER, INC., a Delaware)
corporation, DELL USA L.P.,)
a Texas Limited Partnership)
and DELL MARKETING L.P., a)
Texas Limited Partnership,)
Defendant.)

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<p>1 2 3 DEPOSITION OF AMY MAI ATSUMI 4 TAKEN ON BEHALF OF THE PLAINTIFFS 5 IN OKLAHOMA CITY, OKLAHOMA 6 ON DECEMBER 17, 2008 7 8 9 10 11 12 13 Reported by: Elizabeth Caudill, CSR, RMR, CRR 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>2 1 CONTENTS 2 Page Line 3 Direct Examination by Ms. Waters 6 6 4 Cross-Examination by Mr. Fox 169 20 5 Redirect Examination by Ms. Waters 171 6 6 Jurat Page 176 7 Witness Signature Page 177 8 Reporter's Certificate 178 9 10 PLAINTIFF'S INDEX OF EXHIBITS 11 Page Line 12 Exhibit 1 9 16 13 Exhibit 2 10 6 14 Exhibit 3 43 4 15 Exhibit 4 51 6 16 Exhibit 5 75 11 17 Exhibit 6 83 14 18 Exhibit 7 103 19 19 Exhibit 8 124 15 20 Exhibit 9 143 2 21 22 23 24 * * * * * 25</p>
	<p>3 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

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<p>1 Exhibit 2, I know you said you're not familiar 2 with this document, per se, but there's a couple 3 references here. One of them is to -- if you'll 4 look at the third page which is marked Davis 45. 5 A Yes, ma'am. 6 Q And at 58 it says "ISR, inside sales 7 representative." 8 A Yes. 9 Q Do you see that? 10 A Yes, I do. 11 Q Is ISR the term that would include 12 business sales representatives? 13 A Yes, ma'am. 14 Q Does it encompass more than just 15 business sales representatives? In other words, 16 would it include consumer sales representatives, 17 as well as business sales representatives? 18 A It would include that. 19 Q Do you see any other terminology that's 20 listed on this dictionary page that would include 21 a business sales representative other than number 22 58, ISR? 23 A Could you rephrase -- could you state 24 your question one more time just to make sure 25 I'm --</p>	<p>14</p> <p>1 accounts? 2 A Yes, ma'am. 3 Q Now, I take it the ISR terminology 4 would include not just sales reps that are 5 focused on selling to businesses but it would 6 include consumers; correct? 7 A Yes, according to our job titles. 8 Q But the RSR function would only be 9 business-focused sales? 10 A No. We have individuals with the job 11 title ISR that are relationship sales 12 representatives. 13 Q That focus on consumer sales? 14 A No. The individuals that support 15 relationship customers are included -- are part 16 of our business sales division. 17 Q Okay. I guess I'm confused. 18 A Sure. 19 Q I'm just trying to get to: Are the 20 RSR's focused only on selling to businesses, 21 ma'am? 22 A Yes. 23 Q Okay. But the terminology ISR can 24 incorporate more than business-focused sales 25 reps; correct?</p>	<p>16</p>
<p>1 Q Do you see on the dictionary pages I've 2 presented to you as Exhibit 2 any other terms 3 that would incorporate the ISR job function other 4 than number 58? 5 A So in the document you provided, page 6 labeled Davis 0046, there is item number 77 -- 7 Q Okay. 8 A -- that says "relationship sales 9 representatives." Those are individuals whom we 10 consider sales representatives also included in 11 our business sales division. 12 Q How do those differ from ISR's? 13 A Relationship sales representatives? 14 Q Yes. 15 A Their job responsibilities differ in 16 some regard with regards to how they manage their 17 customer relationships. 18 Q And what is the difference, generally, 19 If you could tell us? 20 A Relationship sales representatives are 21 assigned accounts to which they maintain and 22 manage, and often outbound contact to those 23 customers directly rather than waiting for those 24 customers to call in through a queue. 25 Q And these accounts, are these business</p>	<p>15</p> <p>1 A Correct. 2 Q All right. Now, are you saying that 3 the RSR's, would those individuals fall under the 4 category ISR? 5 A Yes, that is what I'm saying. 6 Q Okay. Now, in terms of compensation, I 7 understand there's been a change. Consumer sales 8 reps are now hourly employees; is that correct? 9 A Correct. 10 Q However, the business sales 11 representatives -- by the way, what's the best 12 way to refer to business sales representatives? 13 Do you use any type of acronym? 14 A No. You can utilize business sales 15 representatives if my understanding is by your 16 use non-consumer sales representatives. 17 Q All right. Are those folks, are they 18 hourly or are they salaried individuals right 19 now? 20 A Currently they are salaried individuals 21 non-exempt. 22 Q So there's been no change to the 23 business sales representatives as there was with 24 the consumer sales representatives in terms of 25 compensation?</p>	<p>17</p>

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<p>1 A With regard to salary status, no.</p> <p>2 Q All right. Now, going back to your</p> <p>3 responsibilities and the call centers that fall</p> <p>4 under your responsibility, Oklahoma City employs</p> <p>5 business sales representatives; correct?</p> <p>6 A Correct, among other employees as well.</p> <p>7 Q What about Twin Falls, Idaho, do you</p> <p>8 have business sales representatives employed at</p> <p>9 that call center?</p> <p>10 A No, we do not.</p> <p>11 Q What are the functions that are</p> <p>12 represented at that call center?</p> <p>13 A Primarily customer care agents, as well</p> <p>14 as technical support representatives.</p> <p>15 Q Are there any RSR's employed at Twin</p> <p>16 Falls?</p> <p>17 A No, ma'am.</p> <p>18 Q Now, what about the -- is it Fremont,</p> <p>19 California?</p> <p>20 A Yes.</p> <p>21 Q Is that solely tech support or do you</p> <p>22 have business sales representatives at that call</p> <p>23 center?</p> <p>24 A Solely tech support.</p> <p>25 Q All right.</p>	<p>18</p> <p>1 Do you understand my question?</p> <p>2 A I don't. If you could please repeat it</p> <p>3 or rephrase it.</p> <p>4 Q Do you have counterparts that are</p> <p>5 responsible for other divisions within the U.S.?</p> <p>6 A Yes, I do.</p> <p>7 Q And what are the names of those other</p> <p>8 divisions?</p> <p>9 A I have a counterpart who is responsible</p> <p>10 for what we consider U.S. east, eastern half of</p> <p>11 the United States.</p> <p>12 Q Okay.</p> <p>13 A Central Texas.</p> <p>14 Q Any others?</p> <p>15 A I have a counterpart that is</p> <p>16 responsible for Canada and a counterpart that is</p> <p>17 responsible for Latin America.</p> <p>18 Q And focusing just on those divisions</p> <p>19 that are continental U.S. or Alaska and Hawaii,</p> <p>20 do your counterparts at U.S. east and central</p> <p>21 Texas divisions also report to Ms. Heitzler?</p> <p>22 A Yes. And it is the same individual for</p> <p>23 U.S. east and central Texas.</p> <p>24 Q What's the name of that individual?</p> <p>25 A Kellie, K-E-L-L-I-E, Teal-Guess.</p>	<p>20</p>
<p>1 A We do have a few outside account</p> <p>2 executives but they are considered outside sales</p> <p>3 account managers.</p> <p>4 Q Dell does not consider those business</p> <p>5 sales representatives?</p> <p>6 A They're considered sales</p> <p>7 representatives but not inside sales</p> <p>8 representatives.</p> <p>9 Q Now, who do you report to?</p> <p>10 A Cheryl, C-H-E-R-Y-L, Heitzler,</p> <p>11 H-E-I-T-Z-L-E-R.</p> <p>12 Q What is her title?</p> <p>13 A Vice-president/human resources.</p> <p>14 Q Is she located in Oklahoma City?</p> <p>15 A No, she is not.</p> <p>16 Q Is she in Round Rock?</p> <p>17 A Yes. She works out of our Round Rock</p> <p>18 facility.</p> <p>19 Q Now, other than the western -- what did</p> <p>20 you call the division that you're responsible</p> <p>21 for?</p> <p>22 A Western half of the United States. We</p> <p>23 also call it U.S. west.</p> <p>24 Q Okay. What are the other divisions</p> <p>25 that are comparable to that one within Dell?</p>	<p>19</p> <p>1 Q Can you spell that for us?</p> <p>2 A T-E-A-L hyphen G-U-E-S-S.</p> <p>3 Q All right. And I take it</p> <p>4 Ms. Teal-Guess also supports, similarly to you,</p> <p>5 other call centers in different locations across</p> <p>6 the U.S.?</p> <p>7 A That is correct.</p> <p>8 Q And is she responsible for call centers</p> <p>9 in Round Rock and Nashville?</p> <p>10 A Yes, ma'am.</p> <p>11 Q Was she also responsible for a call</p> <p>12 center in McGregor?</p> <p>13 A No, ma'am.</p> <p>14 Q Who was responsible for that call</p> <p>15 center?</p> <p>16 A If I'm correct, the human resources</p> <p>17 leader at the time that -- McGregor as in Texas;</p> <p>18 correct?</p> <p>19 Q Yes.</p> <p>20 A At the time that McGregor existed, I</p> <p>21 believe that the human resources person</p> <p>22 responsible was Shawn Maurice.</p> <p>23 Q Was Ms. Maurice also responsible for</p> <p>24 the Oregon call center? Or the Roseburg call</p> <p>25 center?</p>	<p>21</p>

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<p>1 A That is my understanding.</p> <p>2 Q Okay. Now, other than Round Rock,</p> <p>3 Nashville, and now McGregor which is closed --</p> <p>4 and that's correct, it's closed; correct?</p> <p>5 A Correct.</p> <p>6 Q All right -- are there any other call</p> <p>7 centers that you're aware of that employ business</p> <p>8 sales representatives?</p> <p>9 A Could you repeat that question one more</p> <p>10 time?</p> <p>11 Q Sure. Other than Round Rock,</p> <p>12 Nashville, and the Oklahoma City call center and</p> <p>13 the now closed down McGregor call center, are you</p> <p>14 aware of any other call centers that employ</p> <p>15 business sales representatives?</p> <p>16 A No, I am not.</p> <p>17 Q All right. So we would need to talk to</p> <p>18 Ms. Teal-Guess if we were wanting to get</p> <p>19 information about business sales representatives</p> <p>20 that were employed at Round Rock or Nashville or</p> <p>21 McGregor? Well, not McGregor, but Round Rock or</p> <p>22 Nashville? Is that fair?</p> <p>23 A Yes.</p> <p>24 Q Okay. Going back to Exhibit 1,</p> <p>25 Ms. Atsumi, let me -- a few of these, I think,</p>	<p>22</p> <p>1 information for us; is that correct?</p> <p>2 A That information would be attainable,</p> <p>3 correct.</p> <p>4 Q All right. What would you need to look</p> <p>5 at to get that information?</p> <p>6 A Historical head count reports.</p> <p>7 Q The historical head count report, is</p> <p>8 that a report that's generated out of Round Rock?</p> <p>9 A Yes.</p> <p>10 Q Have you been asked to produce or</p> <p>11 create a historical head count report in</p> <p>12 connection with this case?</p> <p>13 A I have been asked to understand what</p> <p>14 the historical head count has been in the</p> <p>15 facility.</p> <p>16 Q And you've gone to the computer to get</p> <p>17 that information?</p> <p>18 A I have contacted our HR operations</p> <p>19 organization in Round Rock to have them obtain</p> <p>20 that information.</p> <p>21 Q Who was it that you contacted to get</p> <p>22 that information?</p> <p>23 A My initial contact was with Kelly</p> <p>24 Matheny, K-E-L-L-Y, M-A-T-H-E-N-Y.</p> <p>25 Q What's Ms. Matheny's title, if you</p>	<p>23</p> <p>1 are topics that won't take very long to cover, so</p> <p>2 let's go back to those.</p> <p>3 The first topic, number 1, is "The</p> <p>4 number of total business sales representatives or</p> <p>5 all non-consumer sales representatives employed</p> <p>6 at any time during the proposed class period in</p> <p>7 Oklahoma."</p> <p>8 Do you see that?</p> <p>9 A Yes, I do.</p> <p>10 Q Do you have an idea of the number that</p> <p>11 would be responsive to that topic?</p> <p>12 A So currently, the total number of</p> <p>13 business sales representatives is approximately</p> <p>14 500.</p> <p>15 Q All right. And that number has</p> <p>16 dwindled over the course of time since this call</p> <p>17 center's been open; is that correct?</p> <p>18 A Since the Oklahoma City call center has</p> <p>19 been opened, it has fluctuated both up and down.</p> <p>20 Q What is the most -- what's the highest</p> <p>21 number of business sales representatives that</p> <p>22 have been employed in Oklahoma City?</p> <p>23 A I do not have that specific number at</p> <p>24 the top of my head.</p> <p>25 Q You would be able to get that</p>	<p>25</p> <p>1 know?</p> <p>2 A I don't know her exact title.</p> <p>3 Q But she's employed in the HR operations</p> <p>4 group in Round Rock; correct?</p> <p>5 A Correct.</p> <p>6 Q And she looked at some figures and</p> <p>7 verbally gave you the 500 approximate figure you</p> <p>8 just referred to?</p> <p>9 A No.</p> <p>10 Q Okay. What was your communication with</p> <p>11 Ms. Matheny?</p> <p>12 A So it was a request to generate</p> <p>13 historical head count information, and the</p> <p>14 response that I was provided was that that could</p> <p>15 be generated and they believed that that was</p> <p>16 information -- information was previously</p> <p>17 consolidated or generated at the request of other</p> <p>18 individuals.</p> <p>19 Q All right. But she didn't tell you any</p> <p>20 figures, per se?</p> <p>21 A No, ma'am.</p> <p>22 Q Just that she had previously generated</p> <p>23 a report?</p> <p>24 A Correct.</p> <p>25 Q Did you ask to see the report?</p>
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<p>1 A No, I did not. It was my understanding 2 that that data was handled through other 3 individuals in our organization. 4 Q All right. Was it handled in 5 connection with this case? Did she say that? 6 A It's my understanding that the 7 information was provided to Dell counsel, and I 8 cannot say for certain whether it was with 9 regards to this particular case. 10 Q Now, you're familiar with the case in 11 Oregon; correct? 12 A I have heard about it, yes. 13 Q All right. So it may have been 14 provided in connection with that case; you just 15 don't know? 16 A Correct. I'm not certain which case. 17 Q All right. Now, I'll represent to you, 18 in my communications with Dell's attorneys in 19 this case, I've been given figures as high as 20 1,900 for business sales representatives. 21 Do you have any understanding whether 22 at any time Dell employed that many business 23 sales representatives in Oklahoma? 24 A Say that one more time, just the second 25 half of the question, please.</p>	<p>26</p> <p>1 to believe that that could be a reasonable 2 number. 3 Q All right. And we'd have to go to 4 Ms. Matheny to verify the exact number; is that 5 correct? 6 A Either Ms. Matheny or somebody within 7 her organization, yes. 8 Q All right. Do you have any information 9 whether or not that figure would also be accurate 10 for both the Nashville call center and the Round 11 Rock call center? 12 A I would not be able to answer questions 13 with regard to numbers for Nashville or Round 14 Rock. 15 Q Okay. You've never seen any documents 16 that would reflect the number of business sales 17 representatives at any of the other facilities? 18 A Not with regards to specific head count 19 numbers. 20 Q Okay. Would you assume that the number 21 in Oklahoma City is fairly consistent with the 22 other call centers across the U.S.? 23 A I would not make that assumption. 24 Q All right. Number two, the second 25 topic on which you've been designated is "Dell's</p>	<p>28</p>
<p>1 Q Well, I'll represent to you I've had 2 communications with Dell's counsel, obviously, 3 and I've been told a figure as high as 1,900 -- 4 and that's just an approximate. I think it was a 5 little more than that -- in terms of the number 6 of business sales representatives that we're 7 looking at in this case, because you understand 8 we're not just focusing on current but it does go 9 back several years to the opening of this call 10 center. 11 Does that number sound accurate to you? 12 A That information may be accurate to 13 include individuals who have since left the Dell 14 organization. At any one given time, there would 15 not have been 1,900 active business sales 16 representatives in Oklahoma City. 17 Q Okay. And if I'm understanding you 18 correctly, I think you're saying over the course 19 of time with attrition and so forth, the company 20 may have employed about 1,900 total business 21 sales representatives during the period it's been 22 open; correct? And I'm talking about Oklahoma 23 City. 24 A Understood. If that is the data that 25 you've been provided, I would find it reasonable</p>	<p>27</p> <p>1 document retention policy or policies which would 2 govern records created and maintained during the 3 proposed class period. 4 Do you see that? 5 A Yes, ma'am. 6 Q What is Dell's document retention 7 policy? 8 A What is it meaning what is the content 9 or -- if could you clarify. 10 Q Yes. Can you generally tell us what 11 the policy is with respect to retention of 12 documents? 13 A So generally, Dell has a global 14 document retention policy -- 15 Q Okay. 16 A -- that defines specific requirements 17 with regards to essential or non-essential 18 documents as defined by the policy in the 19 company. And within that policy, there includes 20 information with regards to required time to 21 retain particular documents dependent on what 22 category those documents fall under. 23 Q All right. Now, you're aware, are you 24 not, that this case relates to compensation for 25 overtime for business sales representatives?</p>	<p>29</p>

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<p>1 familiar with that term?</p> <p>2 A I am familiar with the term.</p> <p>3 Q Is that what it's called or do you call</p> <p>4 them W-O-W?</p> <p>5 A We call them WOW.</p> <p>6 Q Are those records essential or</p> <p>7 non-essential, ma'am?</p> <p>8 A I do not know. I imagine it depends.</p> <p>9 Q And you don't know, then, the</p> <p>10 particular document retention policy regarding</p> <p>11 those documents, do you?</p> <p>12 A No, I do not.</p> <p>13 Q All right. Do you know who we would</p> <p>14 need to talk to to determine that?</p> <p>15 A No, I do not.</p> <p>16 Q By the way, did you review any</p> <p>17 personnel files, KRONOS records, CCO records, or</p> <p>18 WOW tickets in preparation for your deposition</p> <p>19 today?</p> <p>20 A No, I did not.</p> <p>21 Q All right. What about the policies</p> <p>22 that you did review in preparation for the</p> <p>23 deposition today? Are those considered essential</p> <p>24 or non-essential documents?</p> <p>25 A Please repeat the question one more</p>	34	<p>1 to the base salary.</p> <p>2 Q Okay.</p> <p>3 A And the second portion relates to</p> <p>4 overtime hours worked in relation to incentive</p> <p>5 attainments. Sometimes we'll refer to that as</p> <p>6 incentive overtime.</p> <p>7 Q That would include things such as air</p> <p>8 points, for example?</p> <p>9 A I'm not certain if it includes air</p> <p>10 points.</p> <p>11 Q All right. The air points is an</p> <p>12 incentive program, though, isn't it?</p> <p>13 A It was one. I'm not certain that it</p> <p>14 still exists today.</p> <p>15 Q Okay. So do you think the calculation</p> <p>16 for air points would fall under the second</p> <p>17 portion, then, rather than overtime payments</p> <p>18 related to hours worked on base salary?</p> <p>19 A If it was included as part of the</p> <p>20 incentive calculation, it would fall under that</p> <p>21 portion of the calculation rather than the base</p> <p>22 overtime portion of the calculation.</p> <p>23 Q And are both these calculations based</p> <p>24 upon a half time rate of overtime compensation?</p> <p>25 A Could you please repeat that question?</p>	36
<p>1 time.</p> <p>2 Q The policies that you referenced</p> <p>3 earlier that you reviewed in preparation for</p> <p>4 today's deposition, are those considered</p> <p>5 essential or non-essential documents?</p> <p>6 A I do not know.</p> <p>7 Q And you don't know what the document</p> <p>8 retention policy is with respect to those</p> <p>9 policies?</p> <p>10 A Not the particular ones I reviewed.</p> <p>11 Q All right. Let's talk about the third</p> <p>12 topic, "Dell's method of calculation of overtime</p> <p>13 worked by each business sales representative</p> <p>14 employed at any time during the proposed class</p> <p>15 period in Oklahoma."</p> <p>16 Do you see that?</p> <p>17 A Yes, I do.</p> <p>18 Q All right. Generally, can you tell us</p> <p>19 how Dell – what procedure Dell would use to</p> <p>20 calculate overtime for the Oklahoma business</p> <p>21 sales representatives?</p> <p>22 A So the calculation utilized for</p> <p>23 overtime for business sales representatives</p> <p>24 includes two portions. The first portion is an</p> <p>overtime payment based upon hours worked related</p>	35	<p>1 Q Are both the two portions you</p> <p>2 referenced in terms of calculation of overtime,</p> <p>3 both of those are calculated on a half rate based</p> <p>4 upon a fluctuating work week; correct?</p> <p>5 A That is correct, knowing that the base</p> <p>6 salary covers the full rate also that covers</p> <p>7 overtime hours worked.</p> <p>8 Q In other words, business sales</p> <p>9 representatives – none of the business sales</p> <p>10 representatives with Dell, at least the ones</p> <p>11 you're familiar with in the Oklahoma City call</p> <p>12 center, none of them have ever been compensated</p> <p>13 on a time and a half overtime basis, have they?</p> <p>14 A So they do receive in total time and a</p> <p>15 half pay, and their base salary covers the time,</p> <p>16 and then the additional formulas which I just</p> <p>17 described cover the half time portion.</p> <p>18 Q Okay. But just in terms of their</p> <p>19 overtime compensation, ma'am, the overtime is</p> <p>20 never calculated using a time and a half figure,</p> <p>21 itself, is it?</p> <p>22 Do you understand my question?</p> <p>23 A I think so. If you could repeat it one</p> <p>24 more time.</p> <p>25 Q Just with respect to the overtime hours</p>	37

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<p>1 follow-up communication with that customer. 2 Q All right. 3 A So they may not necessarily get that 4 initial contact from the customer directly 5 through the queue. They may get it from another 6 inside sales representatives. 7 Q Okay. Are those individuals that are 8 referred these calls, are they, themselves, on a 9 call queue such that the calls can be transferred 10 to them? 11 A I believe so, yes. 12 Q Okay. Now, do you know what the CC 13 name would be for those folks? 14 A No, I do not offhand. 15 Q Okay. All right. What is meant by the 16 "salary TI"? I'm sorry. There's a salary 17 figure, and I take it that's just the salary this 18 person started at; correct? 19 A Base salary, correct. 20 Q Okay. And then we've got under that 21 "sales TI." What is that? 22 A It stands for -- TI stands for target 23 incentive. 24 Q And then TTC, is that total 25 compensation?</p>	<p>62</p> <p>1 A I'm not aware of business sales 2 representatives that are required to work third 3 shift. 4 Q Is that a consumer sales rep? 5 A Oftentimes -- more often than not, 6 third shift individuals are for technical support 7 or customer care divisions. 8 Q All right. Now, looking at Exhibit 3 9 and Exhibit 4, can you tell whether or not 10 Mr. Moore and Ms. Ricketts were full-time 11 employees? 12 A Yes, I can. 13 Q And does that mean they were working 40 14 hours a week? 15 A I believe that our definition of full 16 time is 35 hours plus per week, or more per week. 17 Q Okay. And 35 hours plus per week, is 18 that set up in shifts or how would Dell schedule 19 the workday for these folks? 20 A It depends on which sales group they 21 work under. 22 Q All right. How does it depend on which 23 sales group they'd work under? 24 A So we have some sales groups that are 25 scheduled specific shifts with start and end</p>	<p>64</p>
<p>1 A Total targeted compensation, correct. 2 Q All right. And it appears, at least 3 from Exhibit 3, that Mr. Moore was not eligible 4 for bonus when he was hired; correct? 5 A Correct, not for the corporate bonus 6 plan. 7 Q And neither was Ms. Ricketts; correct? 8 A Correct. 9 Q Then under "shift," what is meant by 10 "shift"? 11 A "Shift" is often an indicator to 12 utilize for any specific shift differentials, 13 such as third shift or -- more commonly third 14 shift. 15 Q What is third shift? 16 A Customarily, third shift would be 17 individuals who are scheduled to work late 18 evening hours. And I believe -- I don't know the 19 specific time. It might vary by business -- 20 business unit. But typically it's in the 21 evenings through to the early mornings. 22 Q All right. Are the individuals that 23 are on third shift also considered -- I mean, 24 that encompasses some business sales 25 representatives; correct?</p>	<p>63</p> <p>1 times. 2 Q Uh-huh. 3 A We have other sales representatives who 4 are, in general, expected to be at work during 5 designated work hours but they might not be 6 scheduled, per se, a specific shift start or end 7 time. 8 Q Can you tell from looking at 9 Ms. Ricketts and Mr. Moore's what appear to be 10 their new hire cover sheets, whether or not they 11 were individuals working a scheduled 40 hour per 12 week or some lesser amount? 13 A I'm not able to tell that specifically 14 from this document, Exhibit 3 or 4. 15 Q What would we need to look at to tell 16 us if these individuals or any other business 17 sales representative was scheduled to work less 18 than 40 hours a week, if you know? 19 A I don't know specifically. 20 Q The individuals that are scheduled to 21 work less than a 40-hour week, those individuals, 22 they're also compensated using the same half time 23 rate for overtime; is that correct? 24 A They're compensated in the same manner 25 that all of our salaried non-exempt sales</p>	<p>65</p>

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<p>1 representatives are compensated.</p> <p>2 Q Using the fluctuating work week?</p> <p>3 A Correct.</p> <p>4 Q All right. Are you familiar with why</p> <p>5 Dell chose to compensate its business sales</p> <p>6 representatives using the fluctuating work week,</p> <p>7 ma'am?</p> <p>8 A No, I don't know why specifically. I</p> <p>9 wasn't here – employed at the time they made</p> <p>10 that decision.</p> <p>11 Q Do you know who was responsible for</p> <p>12 making that decision or what department was</p> <p>13 responsible?</p> <p>14 A No, I do not.</p> <p>15 Q And what's your understanding of the</p> <p>16 fluctuating work week, ma'am?</p> <p>17 A Could you be a little bit more specific</p> <p>18 on what you mean by my understanding?</p> <p>19 Q Well, do you know what the terminology</p> <p>20 "fluctuating work week" means?</p> <p>21 A So I believe that fluctuating work week</p> <p>22 is another term utilized to describe salaried</p> <p>23 non-exempt. It allows for compensation based</p> <p>24 upon hours that may fluctuate on any given work</p> <p>25 week.</p>	66	<p>1 week"?</p> <p>2 Q Uh-huh.</p> <p>3 A I learned it while being employed at</p> <p>4 Dell.</p> <p>5 Q And what was the circumstance in which</p> <p>6 you heard that term and learned about it?</p> <p>7 A In association with the explanation of</p> <p>8 how salaried non-exempt worked at Dell.</p> <p>9 Q When did you receive this explanation</p> <p>10 of how salaried non-exempt worked?</p> <p>11 A I don't recall the specific date.</p> <p>12 Q Has it been recently?</p> <p>13 A I've known probably within the last two</p> <p>14 years.</p> <p>15 Q And was this in connection with a</p> <p>16 conversation with any of your supervisors, or how</p> <p>17 did this come up, if you recall?</p> <p>18 A Came up through talking to one of the</p> <p>19 individuals on our compensation team at Dell when</p> <p>20 I first took the role in Oklahoma City as the</p> <p>21 human resources leader.</p> <p>22 Q And by the way, when was that time</p> <p>23 frame that you took that role as human resources</p> <p>24 leader? And that's the position you hold now;</p> <p>25 correct?</p>	68
<p>1 Q In other words, hours fluctuating below</p> <p>2 40 hours per week; is that correct?</p> <p>3 A Hours fluctuating above 40 hours a</p> <p>4 week. So anyone on our fluctuating work week or</p> <p>5 salaried non-exempt gets compensated, at minimum,</p> <p>6 for the full 40 hours.</p> <p>7 Q Is it your understanding that in order</p> <p>8 to use a fluctuating work week method of</p> <p>9 calculation of overtime that the individual has</p> <p>10 to work less than 40 hours a week?</p> <p>11 MR. FOX: I'll object to that to the</p> <p>12 extent it calls for a legal conclusion.</p> <p>13 Q (By Ms. Waters) Do you understand my</p> <p>14 question?</p> <p>15 A I didn't, actually.</p> <p>16 Q Okay. And you don't have any legal</p> <p>17 training; correct?</p> <p>18 A No.</p> <p>19 Q And you don't have any specific</p> <p>20 training through Dell on FLSA or overtime wage</p> <p>21 and hour issues, do you?</p> <p>22 A No.</p> <p>23 Q Tell me how you first learned about the</p> <p>24 term "fluctuating work week," ma'am.</p> <p>25 A So the specific term "fluctuating work</p>	67	<p>1 A Correct. I hold the human resources</p> <p>2 leader, but my current responsibilities include</p> <p>3 more than just Oklahoma City.</p> <p>4 Q And that's fair enough. All right. So</p> <p>5 when were you promoted to take that role as a</p> <p>6 leader?</p> <p>7 A Beyond Oklahoma City or just for</p> <p>8 Oklahoma City?</p> <p>9 Q Well, let's take Oklahoma City first.</p> <p>10 A Okay. Oklahoma City in February of two</p> <p>11 thousand and – I'm sorry. I have to count back.</p> <p>12 Just one moment – 2007.</p> <p>13 Q Okay. And then you were promoted to</p> <p>14 have more responsibility beyond Oklahoma City</p> <p>15 later?</p> <p>16 A Correct.</p> <p>17 Q When was that date?</p> <p>18 A I don't know the exact date. I believe</p> <p>19 it was March 2008.</p> <p>20 Q All right. Did you have the</p> <p>21 conversation about this fluctuating work week in</p> <p>22 March 2008?</p> <p>23 A No. It was closer to the February 2007</p> <p>24 time frame.</p> <p>25 Q All right. And who were you talking</p>	69

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<p>1 Q Okay. So I've got it grouped 2 appropriately here? This is what she should have 3 received as part of her offer letter; correct? 4 A It's a reasonable -- it's a reasonable 5 assumption, yes, to make. 6 Q And then the last page, Dell-Davis 54 7 is titled "guarantee option." Do you see that? 8 A Yes, I do. 9 Q And that shows her base salary with her 10 target incentive; correct? 11 A Yes, ma'am; uh-huh. 12 Q And then her total target compensation 13 of 27,500. Do you see that? 14 A Yes, ma'am. 15 Q This doesn't reflect any guarantee or 16 anticipated amount she would receive for 17 overtime, does it? 18 A State that one more time. 19 Q This doesn't reflect any overtime 20 compensation, does it? 21 A So it doesn't reflect specific 22 additional compensation for overtime hours 23 worked. 24 Q Is overtime somehow included in the 25 5,800 incentive?</p>	78	<p>1 week -- fair enough? 2 A Yes, ma'am. 3 Q -- she would be due some amount of 4 money above and beyond 21,700? 5 A Yes. She would receive -- yes. She 6 would receive compensation above 21,700 on 7 annualized -- I mean, yes. 8 Q Okay. Regardless of whether or not she 9 hit and received any amount of annual target 10 incentive; correct? 11 A Correct. 12 Q All right. Now, is there any reference 13 to how overtime would be paid to her if she 14 earned it in any of the information in the new 15 hire offer letter we're looking at? 16 A So in the offer letter, there's not 17 specific verbiage referencing additional 18 compensation for overtime hours worked. 19 Q Is there any reference at all to 20 overtime? 21 A Specific reference to overtime? No. 22 Q All right. Is there any document that 23 you're aware of that was provided to Ms. Davis or 24 any of the other new hire business sales 25 representatives that talked about compensation</p>	80
<p>1 A Say that one more time. I'm sorry. 2 Q Well, I'm just trying to understand 3 what you just said. 4 A Okay. 5 Q This doesn't reflect any wording of 6 overtime compensation, does it? 7 A No wording of overtime compensation, 8 no. 9 Q All right. On any of the figures we're 10 looking at here, base salary, annual target 11 incentive and total target compensation, does 12 Dell consider that they include some amount of 13 overtime? 14 A For both the base salary of 21,700 and 15 the target incentive of 5,800 are utilized to 16 calculate additional compensation for overtime 17 hours worked. 18 Q Okay. But that's not my question. 19 Overtime would be something above and beyond, for 20 Ms. Davis, beyond 27,500; correct? 21 A It would include additional pay above 22 21,700, but that 21,700 also covers all hours 23 worked, including overtime hours. 24 Q Okay. Now, but my question is: If she 25 works overtime any time more than 40 hours a</p>	79	<p>1 for overtime hours worked? 2 A So I don't know specifically what 3 Catherine Davis was provided during her new hire 4 training, but that -- she may have received 5 information with regards to how overtime 6 calculations are specifically handled at Dell 7 during her training and on-boarding process at 8 Dell. 9 Q Okay. She may have? It's not a matter 10 of practice that each and every new hire receives 11 the information about how overtime is paid, 12 ma'am? 13 A So it is a matter of practice. I'm 14 just speaking on -- from the fact that I wasn't 15 in Oklahoma City in 2005, and so it's reasonable 16 to assume because our practice is is that 17 information is provided, that she would have 18 received it. 19 Q What is the practice in terms of 20 informing and advising new employees about how 21 overtime is compensated? 22 A So during new hire training, we have 23 facilitators that provide specific information 24 with regards to job duties, responsibilities, 25 expectations of the first few months of</p>	81

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<p>1 from looking at this if the information here was 2 derived from KRONOS or some other source? 3 A I cannot tell just from looking at this 4 document. 5 Q All right. Now if you look at the 6 totaled amounts, it appears that, at least with 7 respect to the Monday through Friday days, 8 there's a few Saturdays reflected, that Ms. Davis 9 was working at least an eight-hour day; correct? 10 A According to this report, it appears 11 that way, certainly through any Monday through 12 Friday totals. There are a couple, as you 13 described, Saturday amounts that are less than 14 eight hours. 15 Q And at least from this it appears she 16 is working at least 40 hours a week; correct? 17 A Yes, ma'am, it appears that way. 18 Q All right. You mentioned earlier that 19 some of the business sales representatives are -- 20 I can't recall what you said specifically, but 21 you said there were some people that were 35 hour 22 a week targeted work weeks. 23 A No, I didn't say that they were 35 hour 24 a week targeted work weeks. I had just mentioned 25 that her Dell definition of full time, that may</p>	90	<p>1 A Correct. Or sick or leave early, yes. 2 I mean -- yes. 3 Q Okay. Now, aside from the sick days or 4 the vacation days, are you aware of anybody 5 that's working less than 40 hours a week on a 6 regular basis that's a business sales rep? 7 A That's a business sales rep that's a 8 full-time business sales rep, no. 9 Q All right. Now, there's a couple 10 entries I wanted to ask you about here. I know 11 you said you haven't seen this specific one on 12 Ms. Davis, but I want to see if you can kind of 13 tell us what this is referring to. 14 If you look about a third of the way 15 down on dates to Friday and Saturday, 7-22 and 16 7-23 on the first page of Exhibit 6 -- and that's 17 Dell-Davis 163 -- do you see those two entries? 18 A Yes, ma'am. 19 Q It appears that Ms. Davis punched in at 20 10:00 a.m. on the 22nd -- or the 23rd. I'm 21 sorry. Do you see that? 22 A Yes. 23 Q And then there's another punch in at 24 2:00 p.m. 25 A Yes.</p>	92
<p>1 include individuals that work less than 40 hours 2 a week. 3 Q Okay. As you sit here today, are you 4 aware of business sales representatives in 5 Oklahoma City, either currently or at any point 6 in time, that were assigned schedules amounting 7 to less than 40 hours a week? 8 A I don't know of any specific 9 individuals that were assigned less than 40 hours 10 a week, again because I don't have intimate 11 knowledge of every individual's schedule, but I 12 am aware of individuals who may have worked less 13 than 40 hours a week. 14 Q Okay. On a regular basis? 15 A That, I don't know for sure. 16 Q In fact, are you aware of any business 17 sales representatives as you sit here today, 18 ma'am, that are targeted to work less than 40 19 hours per week? 20 A With the full-time job, no, not 21 scheduled on a consistent basis to work 40 -- 22 less than 40 hours a week. 23 Q Okay. So they may from time to time if 24 they take a day off, correct, work less than 40 25 hours a week?</p>	91	<p>1 Q Do you see that? But there's no out 2 punch. 3 A Yes. 4 Q But there's a reference to MO? 5 A Yes, I see that. 6 Q What is that referring to? 7 A I don't know what MO stands for. 8 Q And then it appears, anyway, that -- 9 and by the way, the in punch, is this a start 10 time that Ms. Davis would have entered in KRONOS 11 or is this derived from some other source such as 12 her swiping her security pass or something like 13 that? 14 A So if this is, indeed, a KRONOS report, 15 it would be reasonable to assume that it was 16 Ms. Davis that entered that time. 17 Q Okay. And then if you look across the 18 way on "totaled amount" on 7-23, it says "zero." 19 Does this appear to reflect to you that there's 20 an in punch but she's not getting credit for any 21 time worked on Saturday 7-23? 22 A So I see where it says "zero" for 23 totaled amount, but without understanding what 24 MO means, I can't say for certain whether or not 25 she did or did not receive credit for that date.</p>	93

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<p>1 Q That is actually not what 8:00 to 5:00 2 calculates, is it?</p> <p>3 A No.</p> <p>4 Q And KRONOS, in fact, is set up to 5 deduct an hour for lunch every day; is that 6 correct?</p> <p>7 A Yes.</p> <p>8 Q Are you aware whether or not -- you're 9 aware from time to time that business sales 10 representatives may work through lunch to attend 11 trainings and things of that sort?</p> <p>12 A I'm aware that there may be reasons why 13 sales representatives might work through their 14 lunch hour or a portion of their lunch hour.</p> <p>15 Q All right. Are you aware of Dell in 16 Oklahoma City doing any type of audit to go back 17 and compensate their business sales 18 representatives for that period of time worked 19 during those lunches?</p> <p>20 A So I'm not aware of any particular 21 audit, although we make it very clear to all 22 sales representatives in the business sales 23 division that it's their responsibility to ensure 24 that their KRONOS entries are accurate, which 25 means if they worked through their lunch period</p>	<p>98</p> <p>1 A I believe that if -- if they have not 2 already passed the required submission date for 3 KRONOS for that pay period, they are able to go 4 in directly into KRONOS and enter in that 5 information.</p> <p>6 Q Okay. All right. Now, as you look at 7 this printout, though, I'll represent to you each 8 of these time entries has deducted the hour lunch 9 except those that are shorter than an eight-hour 10 day.</p> <p>11 So does this appear to you to say that 12 Ms. Davis never, in fact, worked any period of 13 time during her lunch break?</p> <p>14 A So while on the surface it may appear 15 that way, individuals can -- as they adjust their 16 in time or their out time, they can adjust it to 17 reflect total hours worked.</p> <p>18 So hypothetically, an individual who 19 may have worked through 30 minutes of their lunch 20 break could punch an out time of, say, 5:30 21 rather than 5:00 to reflect the additional 30 22 minutes of time worked in the total day.</p> <p>23 Q Okay. So that's yet another mechanism 24 other than the WOW ticket whereby they could get 25 compensated --</p>
<p>1 or a portion of their lunch period, it's their 2 responsibility to punch in and out accordingly or 3 to reflect that in their KRONOS records so that 4 they can be compensated for that portion worked.</p> <p>5 Q Okay. Now here, though, Ms. Davis, at 6 least on our example of July 12th, is entering 7 time of 8:00 a.m. to 5:00 p.m. with no in and out 8 for lunch; correct?</p> <p>9 A Not that I can see in this report.</p> <p>10 Q But nonetheless, KRONOS is set up to 11 deduct from those entries the one hour for lunch; 12 correct?</p> <p>13 A Correct.</p> <p>14 Q What would Ms. Davis or anybody else, 15 for that matter, who worked sometime during their 16 lunch break, have to do to go back in to make 17 sure KRONOS adds back in the time they worked 18 during lunch?</p> <p>19 A So an individual can go back into the 20 KRONOS system and enter in -- or adjust either 21 their start time, their end time, or add in 22 punches in and out to reflect accurate working 23 times.</p> <p>24 Q All right. And that would be through a 25 WOW ticket; is that correct?</p>	<p>99</p> <p>1 A Directly to --</p> <p>2 Q -- for hours work?</p> <p>3 A -- into KRONOS, correct. They could 4 either do that directly into KRONOS or they could 5 submit a WOW ticket if the KRONOS system had 6 already locked for that pay period.</p> <p>7 Q When does it lock for the pay period?</p> <p>8 A I can't remember the specific dates. I 9 believe it is a Tuesday before the -- I don't 10 know specifically what the cut-off date is.</p> <p>11 Q Okay.</p> <p>12 A I would only be speculating or 13 guessing.</p> <p>14 Q This report was printed on January 15 17th, 2008, at least from the entry at the top 16 right there.</p> <p>17 A That's what it says, yes.</p> <p>18 Q So any adjustments that Ms. Davis may 19 have made or attempted to make to compensate for 20 any hours she may have worked, hypothetically, 21 during her one-hour lunch period, these should be 22 reflected in this printout; correct?</p> <p>23 A I believe so. However, I don't know 24 for certain whether or not any adjustments made 25 through a WOW ticket are captured in this report.</p>

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<p>1 Q Okay. What other reports, then, would 2 Dell utilize to come up with total hours worked 3 aside from these time detail printouts, ma'am? 4 A I suspect payroll reports. 5 Q Okay. And are those generated from 6 KRONOS or is that some different system? 7 A I don't know all the systems they use 8 specifically in our payroll department. 9 Q Okay. So you really don't know that 10 the payroll reports are going to capture that 11 time, do you? 12 A So I would imagine our payroll 13 department captures whatever they need to capture 14 to ensure individuals are paid appropriately. 15 Q Okay. 16 A But again, I don't know specifically, 17 in your hypothetical situation, if she had 18 submitted WOW tickets or an individual submits 19 WOW tickets, whether or not it's captured on 20 something like this time detail report. 21 Q Okay. Now, other than the individual 22 going and making a specific effort to generate a 23 WOW ticket or log in time beyond the time period 24 they stopped working for the day to capture hours 25 worked at lunch, does Dell do anything</p>	<p>102</p> <p>1 well, what records are utilized by Dell when 2 coming up with total hours worked for purposes of 3 calculating overtime, ma'am? 4 A Repeat that question one more time, 5 please. 6 Q Yes. What records does Dell look at to 7 determine total hours worked when it's going 8 through its overtime calculation? 9 A I believe that the records utilized are 10 from our KRONOS system which is our official time 11 keeping system. 12 Q So what we're looking at would be the 13 report used? 14 A Assuming this came out of KRONOS, yes. 15 But again, I'm not familiar with exact KRONOS 16 report formats, so I can't vouch for certain that 17 this is a KRONOS report. 18 Q Okay. 19 (Plaintiff's Exhibit Number 7 20 marked for identification and made part 21 of the record) 22 Q (By Ms. Waters) I'm showing you what 23 we've marked as Exhibit 7 which appears to also 24 be a time detail printout. Would you agree? 25 A Yes, it appears that way.</p>
<p>1 affirmatively to capture the time these 2 individuals may have worked during their lunch 3 break? 4 A So I believe there are some managers 5 that will go back and remind their team members 6 to ensure that their time is accurately captured 7 in KRONOS, but systematically, in answer to your 8 question, no. 9 Q Okay. I mean, the managers may go back 10 and tell them "Go back and adjust this yourself," 11 but they're not telling HR to do it for the 12 people, are they? 13 A Correct. Human resources does not 14 enter KRONOS time for employees. 15 Q All right. Do you know who was 16 responsible for programming KRONOS to 17 automatically deduct one hour for the in and out 18 punched time? 19 A No, I do not know the name of the 20 individual responsible for that programming. 21 Q Do you know if that's in the HR group 22 that decision may have been made or was that 23 something from finance? 24 A That, I don't know. 25 Q Other than the time detail record —</p>	<p>103</p> <p>105</p> <p>1 Q Are you familiar with an esaunders? 2 A No. Is -- no. I don't know if that's 3 a name or if that's a report name or an 4 individual's name. 5 Q All right. This one, Exhibit 7, I'll 6 represent to you is for another plaintiff in this 7 our case, Joshua Clanton. 8 A Okay. 9 Q Do you see that? 10 A I see the employee name Joshua Clanton 11 on the first page, yes. 12 Q It's a little bit different format 13 between Exhibit 6 and Exhibit 7, and I just want 14 to ask you: If you know, what's the reason for 15 the different format here on the time detail? 16 A I don't know what would be the reason. 17 Q And looking through Mr. Clanton's time 18 records -- and this one's pretty long -- but it 19 appears he was working eight-hour days; correct, 20 or more? 21 MR. HAHN: Can we take a break and that 22 will give her a chance to review it? I need to 23 run to my car. 24 MS. WATERS: Sure. We'll be happy to 25 do that.</p>

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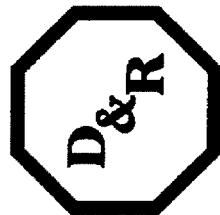
<p>1 up for having worked through lunch or, in fact, 2 if he actually worked 30 minutes past his shift 3 ending?</p> <p>4 A So I don't know if it's easy to 5 determine that specifically just by looking at 6 the numbers on this report.</p> <p>7 Q Well, aside from this report, is there 8 anything you could look at at Dell that would 9 tell us on a particular date what the 30 minutes 10 extra past the shift was for, whether it be 11 working past the shift by 30 minutes or making up 12 for time worked during lunch?</p> <p>13 A I don't believe that there's a report 14 that I could look at that would --</p> <p>15 Q Is there anything could you look at?</p> <p>16 A -- determine for certain. I would 17 imagine you could take a look at whether or not 18 Mr. Clanton actually worked within an appropriate 19 sales tool or handled a customer inquiry during 20 that designated lunchtime, but I don't know if 21 it's captured in the systematic report.</p> <p>22 Q Okay. In other words, you'd have to go 23 to his computer and see if he actually logged off 24 at 6:30 as opposed to 6:00?</p> <p>25 A Or booked any business with a customer,</p>	<p>114</p> <p>1 Q And that's a pretty short period of 2 time for it to boot up; right?</p> <p>3 A Yes, yes.</p> <p>4 Q And the employees are told they need to 5 have the computer ready and booted up at the 6 beginning of the shift; correct?</p> <p>7 A They should.</p> <p>8 Q And they also have to log into the 9 phone system; is that correct?</p> <p>10 A Or be ready to take a call, yes, at the 11 beginning of their shift. Now, I think that the 12 time required to actually log into your phone 13 system is a very short amount of time.</p> <p>14 Q Has Dell done any kind of analysis of 15 that time that's involved for the logging in to 16 the computer, getting the computer ready, and the 17 logging in to the phone system, how much of a 18 period of time that takes before a shift begins?</p> <p>19 A I'm not aware of any such analysis.</p> <p>20 Q Okay. Do you have any idea, just 21 personally from your experience at Dell, how much 22 time that all takes?</p> <p>23 A So from my personal experience, it 24 probably takes no more than a few minutes.</p> <p>25 Q Okay.</p>
<p>1 correct.</p> <p>2 Q Okay. Now, if an individual -- sales 3 representatives that are working on the queue, 4 are they encouraged to arrive prior to their 5 shift start time?</p> <p>6 A So they're encouraged to be ready to 7 work at the start of their shift.</p> <p>8 Q And are they encouraged to come early a 9 specified amount of time in order to ready 10 themselves for beginning the shift?</p> <p>11 A Not that I'm aware.</p> <p>12 Q There's no stated policy that you need 13 to arrive 30 minutes or 15 minutes early?</p> <p>14 A No.</p> <p>15 Q But there is the policy that you need 16 to be prepared to start work right at the 17 beginning of your shift?</p> <p>18 A Correct.</p> <p>19 Q And you'd agree with me, wouldn't you, 20 that there's a time period that is required to be 21 ready at the start of the shift?</p> <p>22 In other words, you've got to turn on 23 your computer and log in; correct?</p> <p>24 A I would make the assumption that, yes, 25 you have to turn on your computer.</p>	<p>115</p> <p>117</p> <p>1 A I theoretically could be ready to start 2 my workday at 8:00 and turn on my computer at 3 7:59 and log in my phone and be ready at 8:00 to 4 take a call.</p> <p>5 Q Okay. And the individuals here that 6 we're looking at, specifically Mr. Clanton 7 because you've looked at his report in Exhibit 7 8 in detail, is he capturing that time prior to the 9 beginning of his shift, or can you tell that from 10 looking at his detailed time report?</p> <p>11 A So I can't know for certain what 12 Mr. Clanton did at exactly upon arrival at his 13 desk on each date.</p> <p>14 There are days that have a start time 15 of, for example, 15 minutes prior to 8:00 where I 16 don't know if he utilized that time to get 17 himself ready or he actually started handling 18 customer inquiries, but certainly he documented 19 time earlier than, say, an 8:00 start time to 20 ensure that he was compensated for that.</p> <p>21 Q Okay. So you think that the times 22 here, at least on Dell-Davis 170, for example, 23 that are entries prior to 8:00 a.m., that would 24 have been Mr. Clanton logging in prior to the 25 shift beginning?</p>

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

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HITUL GANDHI, individually)
and on behalf of a class of)
others similarly situated,)
Plaintiff,)
vs.) No. A-08-CA-248-JRN
DELL INC., and DELL)
MARKETING USA, L.P.,)
Defendant.)

CATHERINE L. DAVIS and TOMMY)
MOORE, Individually and on)
Behalf of others similarly)
situated,)
vs.) No. A-08-CA-794-JRN
DELL, INC. d/b/a DELL)
COMPUTER, INC., a Delaware)
corporation, DELL USA L.P.,)
a Texas Limited Partnership)
and DELL MARKETING L.P., a)
Texas Limited Partnership,)
Defendant.)

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<p>1 2 3 DEPOSITION OF ADELE JENE MACHINSKI 4 TAKEN ON BEHALF OF THE PLAINTIFFS 5 IN OKLAHOMA CITY, OKLAHOMA 6 ON DECEMBER 17, 2008 7 8 9 10 11 12 Reported by: Elizabeth Caudill, CSR, RMR, CRR 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>2 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
	<p>3 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

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<p>1 to be lighter that "We need you here at -- you 2 need to be taking calls at 7:00. If you're not 3 here till 7:10, that's a problem." 4 Q If the person's shift, for example, 5 starts at 8:00 and they arrive right at 8:00 but 6 they're not ready to take calls at 8:00 because 7 they're booting up and getting their phone system 8 turned on, et cetera, does that constitute a 9 tardy, generally? 10 A They get in at 8:00? 11 Q Yes. 12 A Then it would not be. 13 Q It would not be. Okay. Just so long 14 as they're physically at their desk, it's not 15 considered a tardy? 16 A Correct. 17 Q Now, there's also a reference, also 18 includes "Leaving the assigned work area or 19 leaving the building without approval from a 20 member of management." 21 Is the individual able to leave the 22 queue to take breaks or get things from the 23 printer? 24 A Absolutely. 25 Q Okay. What does "leaving the assigned</p>	<p>46 1 A Are we paying him for this time? 2 Q Yes. That's my question. Thank you. 3 A Yes, he would be paid for this time. 4 Q Why would he be paid for this time? 5 A He would -- the only exception would be 6 if any of this was, like, for a full week absence 7 and he wasn't utilizing any of these codes, but 8 PBA is paid time off. 9 Q Okay. 10 A And even if he had exhausted -- as long 11 as he was there for the week, he'd still be paid. 12 Q All right. Is it your understanding 13 that when individuals enter time into KRONOS, 14 they have a log-in time and then a log-out time; 15 is that correct? 16 A I'm not sure if it's called log-in 17 time. They have a -- there's a time to enter the 18 time I'm here and the time I leave. 19 Q Okay. And has that always been subject 20 to manual entry into KRONOS? 21 A The employee has to enter it into 22 KRONOS, yes. 23 Q Okay. It's not connected in any way 24 either to the phone or to the computer being 25 booted up or anything along those lines?</p>
<p>1 work area" when you see it in a warning of this 2 sort typically mean? 3 A This -- so this is like the generic 4 overall what's in the Dell attendance policy? My 5 assumption -- and if a manager came to me and 6 said "This is what happened," would be someone 7 getting up at their desk and working away -- and 8 walking away, not to go to the printer but just 9 leaving. 10 Q Okay. For a period of time -- 11 A Correct. 12 Q -- without being able to take calls? 13 A Correct. 14 Q And Dell's time away from work 15 requirement, that's a written policy from a 16 personnel handbook? 17 A Not a personnel handbook, but this is 18 available -- this piece is available to managers 19 on a website. 20 Q Now, the time that we're looking at 21 here, do you have an understanding from looking 22 at the acronyms beside these dates under the 23 "Description of conduct" under Mr. Clanton, 24 whether or not these things are compensable time 25 or not?</p>	<p>47 1 A That's correct. 2 Q And what about the log-off time, is 3 that also a manual log-off time? 4 A It's manual for the employee to go into 5 KRONOS and say "This is what time I left for the 6 day." 7 Q Okay. Is that the same thing as the 8 hours being calculated for the person being 9 worked that day? Does that make sense? 10 A What the employee enters as the time I 11 began work and the time I end work? 12 Q Uh-huh. 13 A That is the time that they're paid for. 14 Q Okay. There's been some suggestion in 15 this case about KRONOS deducting one hour for 16 lunch. 17 Are you aware that KRONOS deducts 18 automatically one hour for lunch every day? 19 A Yes. 20 Q Okay. And that's something that's been 21 preset in the KRONOS programming by Dell; 22 correct? 23 A Yes. 24 Q Is there a policy with regard to if an 25 individual does a work through lunch, you know,</p>

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<p>1 for example, if they attend a training or 2 something like that, whereby they can get 3 compensated for either all or a part of the time 4 they worked during lunch? 5 A Yes. They should enter -- they should 6 record the actual time that they worked, and if 7 they worked through lunch, they should record 8 that they worked through lunch. 9 Q How are they able to record that they 10 worked through lunch? 11 A It's through the KRONOS tool. 12 Q And do you know how that's done through 13 the KRONOS tool? 14 A I don't specifically know how to do it 15 because I've never had to do it, but my 16 understanding, you -- it's -- I think you sign 17 in, you sign out, you sign in, you sign out 18 again. 19 Q Okay. 20 A But I'm not 100 percent because I've 21 never had to do it or I don't know if there's an 22 exception button or something to take it away. 23 Q Okay. Now, is there a way to stop 24 KRONOS from deducting the hour? 25 A I don't know.</p>	50	<p>1 for example, if you look at a particular week on 2 a calendar in any given week during the year, 3 what events took place during the lunch hour that 4 week? Is there any way we could find this 5 information out? 6 A I don't know. 7 Q You don't know -- 8 A I don't know because I don't know if 9 they keep records of it. I just don't know. 10 Q Do you have any idea who would 11 coordinate lunches being brought in for sales 12 representatives? 13 A It is generally someone within the 14 business. I don't know if it's always the same 15 individual, if it's the -- I don't know who 16 brings it in, honestly, or who coordinates it. 17 Q Okay. And when you say "somebody 18 within the business," are you talking about 19 somebody within the business segment? 20 A So for SMB, someone within SMB. If it 21 was the channels group, someone within the 22 channels group. If it was EPP or the ATG group, 23 somebody within that group. 24 Q Okay. And are you aware whether or not 25 Dell makes any effort in its time keeping</p>	52
<p>1 Q Who would I need to ask about that? Is 2 that the KRONOS management people, or what 3 division or department? 4 A I don't know. I would assume someone 5 that has ownership for KRONOS. And I just don't 6 know that, who that is. 7 Q Okay. Are you physically working in 8 the same vicinity as business sales 9 representatives on a queue, ma'am? 10 A I'm in the same building. 11 Q Are you on a different floor? 12 A Yes. 13 Q Okay. So you don't really observe 14 these folks as they're doing their daily duties 15 and taking phone calls, do you? 16 A Sometimes. 17 Q Are you aware that Dell, from time to 18 time, or frequently, really, brings in lunch for 19 the individuals to do some training about 20 products that are being offered? 21 A Yes. 22 Q Okay. Is there any tracking of how 23 often that's done and what days that's done? 24 A Not that I'm aware of. 25 Q Is there any way we could determine,</p>	51	<p>1 mechanism to reprogram KRONOS on the days that 2 those presentations are being made during the 3 lunch hour? 4 A To reprogram KRONOS? 5 Q Yes, such that it's not going to deduct 6 the hour for lunch. 7 A I don't know. 8 Q You're not aware of that happening, are 9 you? 10 A No. 11 Q Is Dell essentially leaving it up to 12 the employees who attended those trainings during 13 lunch to correct the deduction of time being made 14 for the lunch hour? 15 A The direction always to the employees 16 is to "Record all hours worked. And if you work 17 through lunch, make sure you record that you work 18 through lunch." 19 Q Okay. In the training materials, is 20 your group and the various -- well, in your new 21 hire orientation, for example, are you letting 22 them know that an hour is going to be deducted 23 unless they report working during that time? 24 A I don't know, because I don't know if 25 we talk about KRONOS. I can't recall talking</p>	53

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<p>1 about KRONOS in the new hire orientation. 2 Q Do you know who's responsible for doing 3 any presentations on KRONOS? I mean, you're 4 aware that some KRONOS presentations are done. 5 A Yes. 6 Q But you're not aware whether or not 7 they present that information about the deduction 8 for lunch? 9 A My assumption is that it is. 10 Q But you don't know for sure? 11 A I'm pretty sure, because just every 12 conversation that -- that I've had with an 13 employee or that I've heard managers talk about 14 or when they're having the lunches -- 15 Q Uh-huh. 16 A I don't ever recall sitting in on a 17 training session, though, where they're talking 18 about KRONOS and saying "Make sure that you're 19 doing this." 20 Q Okay. You don't ever recall being 21 present during that -- 22 A Right. 23 Q -- and talking about that particular 24 issue? 25 A Correct.</p>	<p>54</p> <p>1 there's going to have to be a huddle of the 2 manager with the folks on his queue -- his or her 3 queue; correct? 4 A Yes. 5 Q Does Dell generally request that those 6 take place either before the shift starts or 7 afterward? Or what's the policy, if you know? 8 A No policy. We do expect that our 9 managers have team meetings, huddle with the 10 teams, are usually during the workday -- 11 Q Okay. 12 A -- is my understanding. 13 Q Is there time that's built into the 14 shift to take this team off line during the shift 15 and make them unavailable for calls so they can 16 have their huddle? I'm assuming they can't have 17 the huddle and be taking calls; correct? 18 A Correct. 19 Q Because the manager needs to speak to 20 everyone? 21 A Correct. 22 Q So are you saying they're going to take 23 time off the queue to have their huddle or do you 24 think it's really happening sometime after the 25 shift's over?</p> <p>56</p>
<p>1 Q And you have sat through these training 2 sessions before; correct? 3 A I sat through new employee orientation 4 as a new employee, and I don't remember 5 everything that was talk -- and I don't remember 6 being -- talking about KRONOS in that time. I 7 just know that it happened -- that it happens. 8 I don't -- you know, I haven't sat -- I 9 don't sit through every new -- I don't sit 10 through any of the new employee orientations, 11 actually, after my own. 12 I'll come in and observe pieces of it, 13 but -- so I don't think it's a new employee 14 orientation, but I'm really not sure. 15 Q Let's talk about just training sessions 16 in general or team meetings that may occur during 17 the business day. It's my understanding the 18 queue folks, there's maybe 10 to 15 of them that 19 report to a manager; correct? 20 A That's correct. 21 Q And then you have several different 22 managers, and they're all reporting up to an ISR. 23 Is that accurate? 24 A ISM, yes. 25 Q ISM. Okay. And from time to time,</p>	<p>55</p> <p>1 A So each team does have team meetings. 2 They have a certain period of time that they 3 have -- the team meeting is built into the 4 schedule, into the day. 5 Q Okay. 6 A Don't know the frequency. 7 Q Do you have any idea how often those 8 team meetings are held? I mean, are we talking a 9 weekly? Bi-weekly? What's your understanding? 10 A Depends on time of year and the call 11 volume, but I believe a general guideline would 12 be bi-weekly. 13 Q Okay. What are factors that would 14 cause that to either increase or decrease based 15 upon the time of year? 16 A Call volume. 17 Q Do the meetings go up if there's more 18 call volume? 19 A Go down. 20 Q Because you're trying to handle making 21 sure you have enough coverage; is that correct? 22 A Correct. 23 Q All right. But generally speaking, if 24 you're kind of dealing with normal call volume, 25 it's not a spike, you're looking at probably</p> <p>57</p>

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<p>1 Q And this training is before they've 2 ever even gotten on the queue and started 3 working; correct? 4 A Yes. 5 Q Is it reiterated at any point in time 6 after the individual's worked there, for example, 7 six months or a year or anything of that sort? 8 A I don't know. I mean, I'm sure that it 9 is, and I have seen some managers do it, but I -- 10 I don't think there's a formal presentation that 11 goes back out after that. 12 Q That's sort of just handled on a 13 team-by-team basis if they discuss it or not? 14 A That would be my assumption. 15 Q Okay. You're certainly not telling 16 them, "Hey, we need to do a six-month overview so 17 they understand how overtime is calculated"; 18 correct? 19 A No. 20 Q And nobody's telling you to tell them 21 that; right? 22 A No. 23 Q All right. Pre- and post-shift duties, 24 you would agree if it takes someone 15 minutes to 25 get prepared for their shift, if it's an 8:00</p>	<p>66</p> <p>1 Q Do you consider it discouragement to 2 them that Dell is not actively coming in and 3 monitoring that and adjusting it, itself, when 4 it's allowing presentations to take place during 5 lunch? 6 A Do I consider that discouragement? 7 Q Yeah. 8 A No. 9 Q I mean, because it is leaving it up to 10 the employee to have to go in and manually 11 override a system that's already in place; 12 correct? 13 A The employee's responsible for 14 recording their hours worked, including if they 15 worked through lunch. 16 Q Okay. But what I'm saying is unless 17 they take the extra step to override, their entry 18 for that day, assuming they worked fully through 19 lunch, is going to be deducted; true? 20 A If -- if they don't accurately report 21 the hours and they don't record that they were 22 there for lunch, yes, it will be incorrect. 23 Q Okay. Are they given a calendar or 24 anything of that sort so they can note down the 25 dates that they're doing some work during lunch</p>
<p>1 shift, they need to be arriving at 7:45; correct? 2 A If it takes them 15 minutes, yes. 3 Q And then they should commensurately be 4 logging into KRONOS at 7:45 rather than 8:00; 5 correct? 6 A Yes. 7 Q And they are told to do that; correct? 8 A Yes. 9 Q Are the managers of the queue members 10 at any point in time going in and saying, "Look, 11 you know, we need to only reflect in KRONOS the 12 shift"?</p> <p>13 A No. 14 Q Okay. You've never heard of anybody 15 discouraging employees to put in pre-shift and 16 post-shift time worked? 17 A No. 18 Q Okay. And you've never heard of anyone 19 discouraging them to try to override the 20 deduction for the lunch hour; correct? 21 A Discouraging them? 22 Q Yes. 23 A No. 24 Q And you've certainly never done that? 25 A No.</p>	<p>67</p> <p>1 when they're not on the queue? Or is there any 2 type of tracking mechanism to assist them in 3 accurate reporting of the hours worked during 4 lunch? 5 A I don't know. 6 Q Okay. You're not authorizing anything 7 to be issued to them to help them along those -- 8 A No. 9 Q -- lines; right? And Dell's not even 10 monitoring the days, to your knowledge, on which 11 these activities take place; correct? 12 A The -- which activities? 13 Q When you've got lunch coming in or 14 there's trainings happening during lunch. 15 A I don't think so. 16 Q Okay. There's been a change to the 17 consumer sales reps in their compensation. Are 18 you aware of that? 19 A I'm aware there was a change. 20 Q And there was a discussion to change 21 the way the business sales representatives were 22 compensated. Are you aware of that? 23 A I am not part of those discussions. 24 Q You're aware that they occurred, 25 though; right?</p>